

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

FILED
2019 JAN 15 PM 12:00
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

ALLEN BINSTOCK,
Regional Director of
Region 8 of the National
Labor Relations Board,
for and on behalf of the
NATIONAL LABOR RELATIONS BOARD

Applicant

v.

FREEDOM EMPLOYMENT SERVICES, LLC

Respondent

3:19 MC 4
Civil No.

JUDGE HELMICK

APPLICATION FOR ORDER ENFORCING
SUBPOENA DUCES TECUM

Regional Director of Region 8, Allen Binstock (Applicant), for and on behalf of the National Labor Relations Board (Board), an administrative agency of the Federal Government, applies to this Court for an order to compel compliance with a subpoena duces tecum that the Board issued and served on Freedom Employment Services, LLC (Respondent). This application is made under Section 11(2) of the National Labor Relations Act, as amended, 29 U.S.C. § 151 et seq., (the Act). In support of this application, the Board states as follows:

JURISDICTION

1. This Court has jurisdiction of the subject matter of the proceeding and of Respondent by virtue of Section 11(2) of the Act, 29 U.S.C. § 161(2). The subpoena was issued within this judicial district and Respondent is a for-profit limited liability company with Articles of Organization filed in the State of Ohio. Respondent has an office located at 2620 Centennial Road, Suite C, Toledo, Ohio 43617, and is an employer engaged in commerce as defined by

Section 2(6) of the Act, 29 U.S.C. §152(6). Respondent is engaged in business within this district.

THE UNFAIR LABOR PRACTICE CHARGES

2. This application arises out of the investigation of unfair labor practice proceedings currently pending before the Board pursuant to Section 10(b) of the Act. The International Longshoremen's Association, Local 1982 (Union) filed unfair labor practice charges alleging that Midwest Terminals of Toledo International, Inc. (Midwest Terminals) violated Sections 8(a)(5) and (1), 29 U.S.C. § 158 (5) and (1), of the Act. (Charges are attached as Applicants Exhibits A through E)

3. Midwest Terminals operates a stevedoring and warehousing facility in Toledo, Ohio located on the Maumee River near Lake Erie. At the time of the alleged unfair labor practices, the Union was the exclusive collective bargaining representative for certain employees working at Midwest Terminals' Facility One, which is located at 3518 St. Lawrence Drive. The unfair labor practice charges in Case Numbers 08-CA-195939 and 08-CA-208319 allege in relevant part that Midwest Terminals assigned non-bargaining unit employees to perform bargaining unit work on a regular and continuing basis. Case Number 08-CA-204544 alleges that Midwest Terminals directly dealt with bargaining unit employees by hiring them at reduced wages and benefits, and bypassed bargaining unit employees eligible to perform this work. Case Number 08-CA-211702 alleges that Midwest Terminals engaged in bad faith bargaining during negotiations for a successor agreement by a number of alleged actions, including making the above unilateral changes. Case Number 08-CA-212483 alleges Midwest Terminals unlawfully withdrew recognition from the Union.

4. Respondent currently has, and/or at the relevant time periods had, a business relationship with Midwest Terminals whereby it supplies labor to Midwest Terminals at its Facility One. Based on evidence presented during the investigation of the above charges, it is believed that Respondent's employees working at Midwest Terminals are performing bargaining unit work. In addition, the investigation disclosed that many of its employees are former or current employees of Midwest Terminals. The documentation sought by the subpoena duces tecum will reflect whether Respondent is in fact utilizing non-bargaining unit employees to perform bargaining unit work and whether those employees are being paid reduced wages and benefits compared to those established by the Union and Midwest Terminals' past practice and most recent collective bargaining agreement. In addition, the documentation will establish the timeframe associated with these allegations.

THE SUBPOENA

5. In order to properly investigate the unfair labor practice charge allegations, a representative of Applicant made a written request for, and received a subpoena duces tecum from the Board. On September 19, 2018, a representative of the Applicant issued subpoena duces tecum B-1-12RAABP (Applicant Exhibit F) to Respondent's Custodian of Record in care of its agent of record, Monier Deeb. A cover letter directed to Mr. Deeb was included with the subpoena. (Applicant Exhibit G)

6. The subpoena duces tecum directed Respondent's Custodian of Records to appear at 10:00 a.m. on October 3, 2018, or at any adjourned or rescheduled date, at the offices of the National Labor Relations Board at 1240 East Ninth Street, Suite 1695, Cleveland, Ohio, and to produce the following records:

1. Any and all contracts Freedom Employment Services has entered into for the performance of work for Midwest Terminals and/or for the supply of labor to Midwest Terminals.
2. Any and all contracts Freedom Employment Services has entered into with any entity for the performance of work at 3518 Saint Lawrence Drive, Toledo, Ohio 43605 and/or the supply of labor to any entity performing work at that location.
3. The complete personnel files for any Freedom Employment Services employees contracted to perform work for Midwest Terminals or otherwise performing work at 3518 Saint Lawrence Drive, Toledo, Ohio 43605 from December 1, 2016 to present.
4. Payroll records from December 1, 2016 to present for any and all employees contracted to perform work for Midwest Terminals or otherwise performing work at 3518 Saint Lawrence Drive, Toledo, Ohio.
5. Any and all documents detailing and/or showing in any way the nature of the work performed from December 1, 2016 to present by any Freedom Employment Services employees contracted to perform work for Midwest Terminals or otherwise performing work at 3518 Saint Lawrence Drive, Toledo, Ohio.
6. Any and all documents detailing the pay rate and benefits provided from December 1, 2016 to present to any Freedom Employment Services employees contracted to perform work for Midwest Terminals or otherwise performing work at 3518 Saint Lawrence Drive, Toledo, Ohio.
7. For the period from December 1, 2016 to present, any and all documents reflecting the job title and job duties of any Freedom Employment Services employee at the times when

that employee was performing work at 3518 Saint Lawrence Drive, Toledo, Ohio or otherwise on behalf of Midwest Terminals.

8. Any and all handbooks, rules or policies applicable to Freedom Employment Services employees contracted to perform work for Midwest Terminals or otherwise performing work at 3518 Saint Lawrence Drive, Toledo, Ohio, and the dates those documents were in effect.

9. Any and all documents reflecting payments received from Midwest Terminals to Freedom Employment Services for services rendered by Freedom Employment Services from December 1, 2016 to present.

10. Any and all documents reflecting the owners, officers, managers, supervisors, and members of Freedom Employment Services from December 1, 2016 to present.

11. The Articles of Organization and Operating Agreement for Freedom Employment Services.

7. The issuance of this subpoena is consistent with the requirements of Section 11(1) of the Act, 29 U.S.C. § 161(1) and Section 102.31(a) of the Board's Rules and Regulations, 29 C.F.R. §102.31(a) (March 6, 2017). The subpoena described above in paragraph six was served on Respondent by addressing it and sending it by certified mail and by regular mail with delivery confirmation to Respondent's Custodian of Records at its offices located at 2620 Centennial Road, Suite C, Toledo, Ohio 43617. The subpoena was sent in the care of Monier Deeb, who is Respondent's registered agent for service and whose address is also 2620 Centennial Road, Suite C, Toledo, Ohio 43617. A copy of the return of service certificate, signed green card, and USPS tracking documentation for the subpoena sent by certified mail are attached as Applicant Exhibit H. Service fully complies with Section 11(4) of the Act, 29 U.S.C. § 161(4) and Section 102.4

of the Board's Rules and Regulations, 29 C.F.R. § 102.4 (March 6, 2017). This Court may take judicial notice of the Board's Rules and Regulations under 44 U.S.C. § 1507.

8. On October 1, 2018, the Applicant received a letter from Respondent requesting a two week extension to respond to the Region's September 19, 2018 correspondence. (Applicant Exhibit I) By letter dated October 2, 2018, a representative of the Applicant granted the request. (Applicant Exhibit J) On October 11, 2018, the Applicant received a Notice of Appearance from Respondent's counsel. On October 23, 2018, a representative of the Applicant and Respondent's counsel spoke by phone regarding securing Respondent's cooperation with the subpoena and potentially reducing the documentation necessary to respond to the subpoena. On November 5, 2018, a representative of the Applicant emailed Respondent's counsel a letter requesting that Respondent provide the subpoenaed documents by November 14, 2018. The letter further explained that if the deadline was not met, an application for an Order enforcing the subpoena would be filed. (Applicant Exhibit K) Respondent did not respond to this correspondence.

9. Respondent failed and refused to appear as directed by the subpoena duces tecum, as described above in paragraph six. While attempts were made to secure Respondent's cooperation, those efforts failed.

Respondent's Contumacious Conduct

10. Respondent's refusal to appear and provide documentation relevant to the issues in the proceeding constitutes contumacious conduct within the meaning of Section 11(2) of the Act, 29 U.S.C. § 161(2). Furthermore, Respondent's conduct has impeded and continues to impede the investigation of the unfair labor practice charges before the Board and is preventing the Board from carrying out its duties and functions under the Act.

Order to Show Cause

11. In view of Respondent's contumacious conduct, the Board requests:

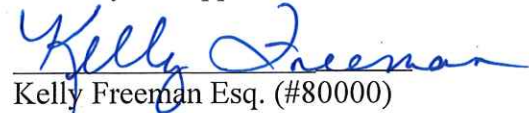
1. That this Court issue an Order to Show Cause directing Respondent to appear before this Court on a date specified in the Order to Show Cause why an order should not issue directing Respondent to produce the subpoenaed records as described above to a representative of the Applicant at its Region 8 office, and to produce its Custodian of Records to provide testimony relevant to those documents. A proposed order is included in the Applicant's submission;
2. After considering arguments in response to the Order to Show Cause, that this Court issue an order directing Respondent to produce the subpoenaed records as described above to a representative of the Applicant at its Region 8 office, and to present its Custodian of Records to give testimony relevant to those documents; and
3. That the Applicant have such other and further relief as may be necessary and appropriate.

Dated: January 15, 2019

Respectfully submitted,

National Labor Relations Board
By: Peter Robb, General Counsel
Iva Choe, Regional Attorney For Region 8

Attorney for Applicant



Kelly Freeman Esq. (#80000)
kelly.freeman@nlrb.gov
Rudra Choudhury (#70445)

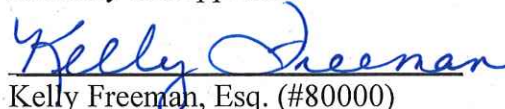
rudra.choudhury@nlrb.gov
NATIONAL LABOR RELATIONS
BOARD REGION 8
1240 East 9th Street-Room 1695
Cleveland, OH 44199-2086
Ph: (216) 303-7378
Fax: (216) 522-2418

Certificate of Service

I hereby certify that on January 15, 2019, I manually filed the foregoing Application for Order Enforcing Subpoena Duces Tecum, and exhibits attached thereto; a Memorandum in Support; and a proposed Order to Show Cause with the Clerk of the Court and served these documents by certified mail, and a courtesy copy without exhibits by email to the following counsel:

Timothy Ryan
Jackson Lewis, P.C.
61 Commerce Avenue
Grand Rapids, MI 49503
Timothy.Ryan@jacksonlewis.com

Attorney for Applicant

Handwritten signature of Kelly Freeman in blue ink.

Kelly Freeman, Esq. (#80000)

kelly.freeman@nlrb.gov

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Fax: (216) 522-2418